

WFG Underwriting Bulletin



To: All Florida Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Florida Underwriting Department
Date: January 19, 2017
Bulletin No: FL 2017-02
Subject: Summary of Florida Legislation From 2016

The following is a summary of certain Bills passed by the Florida legislature in 2016 that directly or indirectly affect title insurance or title to real property in Florida. Some terms used in this Bulletin are: "CS" for "Committee Substitute"; "HB" for "House Bill"; "SB" for "Senate Bill"; and "F.S." for Florida Statutes.

1. Title Insurance – CS/CS/HB 413

This Bill was signed by the Governor on March 24, 2016 and became effective on July 1, 2016. Prior to this Bill, Florida Statute 627.778 limited the dollar amount of risk assumed by a title insurer for a single risk to one-half of the insurer's surplus unless the excess risk was reinsured by an approved reinsurer. This Bill revised F.S. 627.778 to change the dollar amount of risk that may be assumed by a title insurer for a single risk from one-half of its surplus to 100% of its surplus. Also, the Bill changed who can provide reinsurance from "approved" insurers to "authorized" insurers and added "or one or more reinsurers that meet the requirements of F.S. 624.610."

2. Title Insurance – CS/HB 695

This Bill was signed by the Governor on March 10, 2016 and became effective on July 1, 2016. Florida Statute 625.111 sets forth the unearned premium reserve requirements for title insurers. The measure of the reserve required is different for title insurers with less than \$50 million in surplus than those with more than \$50 million in surplus. For Title Insurers with less than \$50 million in surplus, 30 cents of every \$1,000 of risk insured [risk retained and not reinsured] must be reserved. For Title Insurers with more than \$50 million in surplus, the retention is 6.5% of the premium. Two totally different ways of measuring reserves. This Bill amended F.S. 625.111 to allow a title insurer who does not have \$50 million in surplus, but who is a member of an insurance holding company holding \$1 billion or more in surplus, to be treated the same, for reserve purposes, as if the title insurer had \$50 million or more in surplus. The revision also requires that the holding company have a "superior, excellent, exceptional, or equivalent financial strength rating from a rating agency acceptable to the office".

3. Nonresident Plaintiffs in Civil Actions – SB 396

This Bill was signed by the Governor on March 10, 2016 and became effective on July 1, 2016. Florida Statute 57.011 required non-resident plaintiffs, after filing a lawsuit, to file a \$100 surety bond with the Clerk of Court within 30 days of filing the lawsuit. If the bond was not filed within that time

period, the defendant could move to dismiss the case 20 days after giving notice to the plaintiff. The bond could be filed by the plaintiff during that 20-day period to prevent the dismissal. This Bill repealed Florida Statute 57.011.

4. Ad Valorem Tax Exemption for Deployed Servicemembers – HB 7023

This Bill was signed by the Governor on March 8, 2016 and became effective on the same date.

The Florida Constitution at Art. VII, Section 3(g) provides an additional homestead exemption for members of the US military, military reserves, US Coast Guard and its reserves, and the Florida National Guard if they were deployed outside of the continental United States, Alaska, or Hawaii on military operations specified by the legislature to receive the additional exemption. This Bill amended F.S. 196.173 to delete Operation Iraqi Freedom [which ended August 31, 2010] from the list of military operations that qualify for the additional exemption and added other military operations to the designated list of qualified military operations. The Bill also amended F.S. 196.173 to allow the additional exemption for servicemembers deployed outside of the continental United States, Alaska, or Hawaii in subordinate military operations that support the main operations.

5. Community Development Districts – CS/HB 971

This Bill was approved by the Governor on March 24, 2016 and became law on July 1, 2016.

Under F.S. 190.005 in effect prior to this Bill, Community Development Districts (“CDD”) of less than 1,000 acres were created by county or municipal ordinance, and CDD’s having a size of 1,000 acres or more were created by a rule adopted by the Florida Land and Water Adjudicatory Commission. This Bill amended F.S. 190.005(1) and (2) to, among other things, change the designated size from 1,000 acres to 2,500. So, as of July 1, 2016, CDD’s of less than 2,500 acres are created by county or municipal ordinance; and CDD’s having a size of 2,500 acres or more are created by a rule adopted by the Florida Land and Water Adjudicatory Commission. The Bill also amended F.S. 190.012(2)(d) to provide that a CDD is not prohibited from contracting with a towing operator to remove vehicles or vessels from a district-owned facility. Finally, the Bill amended 190.046 to create subsection (4)(a) to authorize the merger of up to five districts in to one surviving CDD by ordinance.

6. Service of Process – CS/CS/SB 1432

This Bill was signed by the Governor on April 8, 2016 and became effective on July 1, 2016.

Service of process is the act of delivering a copy of a summons and complaint to the person(s) being sued. The Bill tweaked three statutes pertaining to service of process i.e. F.S. 48.031, 48.193, and 48.081. Personal service of process under F.S. 48.031(1)(a) is accomplished by delivering a copy of the summons and complaint directly to the defendant by a process server; or by leaving a copy of the summons and complaint at the defendant’s “usual place of abode” with a person who lives there and who is at least 15 years of age; and advising that person of the contents of the summons and complaint.

Substitute service of process on one spouse for another spouse is authorized under F.S. 48.031(2)(a); and for an individual doing business as a sole proprietorship under (2)(b) by serving the person in charge of the business if two attempts to serve the owner at the place of business have failed. Another form of substitute service of process is provided for under F.S. 48.031(6)(a) which, prior to the amendments in this Bill, provided that: “[i]f the only address for the person to be served, which is discoverable through public records is a private mailbox, ... substitute service may be made by leaving a copy of the process [summons and complaint] with the person in charge of the private mailbox” provided that the process server verifies that the defendant does maintain a mailbox at that location.

This Bill amended F.S. 48.031(6)(a) to add virtual offices, executive offices, and mini suites to the locations where substitute service of process may be made by delivering a copy of the summons and complaint to the person in charge of the virtual office, executive office, or mini suite if the only address for the person to be served discovered through the public records is a virtual office, executive office, or mini suite. As with the private mailboxes, the process server must verify that the defendant does maintain a virtual office, executive office, or mini suite at that location. The Bill also created F.S. 48.031(6)(b) to provide definitions of virtual office, executive office, and mini suite.

Florida Statute 48.081 provides for service of process on corporations. Under F.S. 48.081(1)(a) – (d), there is a hierarchy of officers and personnel within the corporation who service of process may be served on. F.S. 48.081(3)(a) provides an alternative to service on the officers and personnel provided for in F.S. 48.081(1)(a) by serving the Registered Agent. If the corporation has not appointed a Registered Agent, F.S. 48.081(3)(a) allows for service of process on any employee at the corporation's principle place of business.

Prior to this Bill, F.S. 48.081(3)(b) provided that “[i]f the address for the registered agent, officer, director, or principal place of business is a residence, or private mailbox, service on the corporation may be made by serving the registered agent, officer, or director in accordance with [F.S.] s. 48.031.” The Bill amended F.S. 48.081(3)(b) to include virtual office, executive office, or mini suite to this: “[i]f the address for the registered agent, officer, director, or principal place of business is a residence, a private mailbox, **a virtual office, or an executive office or mini suite**, service on the corporation may be made by serving the registered agent, officer, director in accordance with [F.S.] s. 48.031.”

The Bill also tweaked F.S. 48.193 regarding activities that subject a non-resident person to the jurisdiction of the courts of Florida.

7. Service of Process on Financial Institutions – CS/CS/SB 1104

This Bill was signed by the Governor on April 1, 2016 and became effective on January 1, 2017. The Bill created F.S. 48.092 entitled Service on Financial Institutions. This new statute is very short: “*Service on financial institutions must be made in accordance with [F.S.] s. 655.0201.*” Florida Statute 655.0201 was substantially amended and will be effective January 1, 2017. F.S. 655.0201(1), which was amended to jive with new F.S. 48.092, states:

“Notwithstanding any other Florida law, this section establishes the proper location of service of process upon a financial institution for all types of service of process to be made on a financial institution.”

F.S. 655.0201(2) was amended to provide that financial institutions doing business in Florida, whether organized under Federal or State law, may designate with the Department of State a place or a registered agent in Florida as the financial institution's sole location or agent for service of process. When a financial institution designates a registered agent or place for service of process in Florida, that place or agent becomes the sole location for service of process on that financial institution.

F.S. 655.0201(3) was amended to create subparagraphs (a) and (b). Subparagraph (a) provides that if the financial institution has no registered agent or service of process cannot be accomplished under subparagraph (2), “*service [of process] may be made to any officer, director, or business agent of the financial institution at its principal place of business or at any other branch, office, or place of business in the state.*”

8. Judgments – CS/SB 1042

This Bill was signed by the Governor on March 9, 2016 and became effective on July 1, 2016.

After a judgment creditor obtains a judgment, the judgment creditor may use the legal procedures set forth in Chapter 56 - specifically Section 56.29, to levy on assets of the judgment debtor to attempt to satisfy the judgment. The House of Representative's Final Bill Analysis dated March 24, 2016 [contained in CS/HB 503, the companion to the Senate Bill] states that F.S. 56.29 was first enacted in 1919 and has remained substantially unchanged since 1919 except for a minor change in 2014. This Bill made several changes to F.S. 56.29 regarding Proceedings Supplementary and related provisions of Chapter 56.

The Bill revised and updated several terms used in Chapter 56 and created F.S. 56.0101 to place all of the Definitions in one Section.

Proceedings Supplementary contained in F.S. 56.29 allows a judgment creditor to pursue assets of the judgment debtor that are in the possession of a 3d party. F.S. 56.29 was substantially revised to establish a Notice to Appear proceeding whereby the judgment creditor may file a motion and supporting affidavits describing assets of the judgment debtor in possession of a 3d party that may be available to satisfy the judgment. Based upon the motion and the affidavits, the court will issue a Notice to Appear directing the 3d party to file an Affidavit stating why the asset(s) should not be applied to satisfy the judgment. Discovery is allowed and there is a right to a jury trial.

The Bill also created Section 56.30 entitled "Discovery in Proceedings Supplementary". F.S. 56.30(1) allows the judgment creditor obtain an Order from the court requiring the judgment debtor to appear before the court or a special magistrate to be examined under oath regarding the judgment debtor's assets that may be levied upon to satisfy the judgment.

9. Guardianships – CS/CS/CS/SB 232

This Bill was signed by the Governor on March 10, 2016 and became effective on the same date. Section 8 of this Bill renumbered F.S. 744.7021 to 744.2001 and changed the name from "Statewide Public Guardianship Office" to the "Office of Public and Professional Guardians". The legislative intent set forth in F.S. 744.1012 was amended at new subparagraphs (4) and (5) to state that the Legislature intends to permit the establishment of offices of public guardians to provide guardianship services when a private guardianship may be inadequate because there are no family members available to serve as a private guardian. Under F.S. 744.2001(1), the Secretary of the Department of Elderly Affairs appoints the Executive Director for the Office of Public and Professional Guardians. This Bill required the Executive Director to establish standards of practice no later than Oct. 1, 2016.

10. Estates – CS/CS/CS/SB 540

This Bill was signed by the Governor on April 6, 2016 and became effective on July 1, 2016.

Prior to this Bill, F.S. 731.106(2) provided, in part, as follows:

"When a nonresident decedent . . . provides by will that the testamentary disposition of . . . of real property in this state, shall be construed and regulated by the laws of this state, the validity and effect of the dispositions shall be determined by Florida law."

In the House of Representatives companion Bill [CS/CS/HB 393], the Final Bill Analysis prepared by the House explains that in the case of *Saunders v. Saunders*, 796 So.2d 1254 (Fla. 1st DCA 2001), the 1st DCA construed F.S. 731.106(2) to mean that Florida Law only applied to the disposition of a non-resident

decedent's Florida property if the non-resident decedent's Will expressly provided that Florida law applies. In *Saunders*, the Will was silent as to Florida law, so the trial court applied the law of the non-resident decedent's home state - Colorado. To address the *Saunders* decision, this Bill created F.S. 731.1055 which states:

"The validity and effect of a disposition, whether intestate or testate, of real property in this state shall be determined by Florida law."

11. Conservation Easements – CS/SB 190

This Bill was signed by the Governor on March 25, 2016 and became effective on July 1, 2016.

Florida Statute 704.06 provides for the creation of perpetual conservation easements. F.S. 196.26 provides an ad valorem tax exemption for conservation easements meeting the required conditions. Prior to changes made by this Bill, after obtaining the ad valorem tax exemption for a conservation easement, the property owner had to renew the tax exemption every year to keep the tax exemption. This Bill amended F.S. 196.011(6)(b) to provide that the property owner is not required to file a renewal application to keep the exemption. After obtaining the tax exemption, the exemption remains on the property until the property ceases being used as a conservation easement.

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.